

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of

DON L. BLANKENSHIP,

Petitioner

HUDALJ 88-1315-DB(R)

.....
Don Blankenship, pro se

Marylea W. Byrd, Esquire
For the Department

Before: William C. Cregar
Administrative Law Judge

ORDER

On December 19, 1988 Petitioner filed a "Motion to Rescind a Debarment" with the Department of Housing and Urban Development (the "Department" or "HUD") and requested a hearing. He claims that he was coerced into signing a settlement agreement in 1978 in which he agreed to a debarment of six years and that the debarment action which resulted in the settlement agreement was illegal. He asserts that a subsequent debarment for an indefinite period not to exceed six years from the date of the original debarment based on his violation of the settlement agreement is, therefore void. The Department has opposed the motion claiming that HUD regulations at 24 C.F.R. Part 24 do not provide for rescission, but only for reinstatement, and that these provisions have not been followed by the Petitioner.

The record in this case establishes that Petitioner entered into a settlement agreement with HUD on April 25, 1978. This was in settlement of a debarment action instituted on December 27, 1976. The agreement expressly provided that he agreed to be debarred from participation in HUD programs for a period of six years commencing April 3, 1978 and ending April 3, 1984. Following a second debarment action, the Hearing Officer, Judge Jean Cooper of the HUD Board of Contract Appeals, determined that Petitioner had violated the terms of the settlement agreement by acting as an agent and attempting to cover his actions with false signatures and statements during the debarment period. HUDBCA No. 81-547-D3 (March 27, 1981). She imposed a debarment for an indefinite period, not less than six years from April 3, 1978. On August 30, 1984 Petitioner asked for reinstatement. HUD's Chief Administrative Law Judge, Alan Heifetz, denied the request. The reasons are instructive. Petitioner had been ordered by Judge Heifetz to address himself to the issues raised in the second debarment action in order to make the necessary showing for reinstatement as required by HUD regulations. He not only did not do so, but failed to serve a copy of his submission on counsel for the Department. Judge Heifetz stated: "Petitioner has failed to convince me that his reinstatement would be in the best interest of the Government or that he understands the requirements of the statutes and the administrative rules and regulations, or that he will comply with them in the future." HUDALJ 84-974-DB(R) (November 26, 1984).

Petitioner's latest request is an attempt to litigate the reasons behind the first debarment and overturn what appears to have been a freely executed settlement agreement more than ten years after it was agreed to. The Government's motion is well taken. The only provision for lifting a debarment is found in 24 C.F.R. Sec. 24.15. This regulations provides for reinstatement upon proof of the existence of certain grounds such as new and material evidence not previously available, reversal of a conviction, bona fide change of ownership or management, or elimination of the causes for which the debarment was imposed.

Petitioner's motion does not contain allegations or proof which relate to any of the grounds addressed in that regulation. In order to establish jurisdiction, Petitioner's Motion must come within the provisions of 24 C.F.R. Part 24. It fails to do so.

Accordingly, it is hereby ORDERED, that Petitioner's Motion to Rescind Debarment is rejected for lack of jurisdiction.

William C. Cregar
Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #2156

Dated: January 23, 1989

CERTIFICATION OF SERVICE

I hereby certify that copies of this ORDER issued by WILLIAM C. Cregar, Administrative Law Judge, HUDALJ 88-1315-DB(R), were sent to the following parties on this 23rd day of January, 1989, in the manner indicated:

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